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IN THE
COURT OF APPEALS OF INDIANA

RONALD CASNER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0703-CR-285
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
CRIMINAL DIVISION, ROOM 6
The Honorable Mark D. Stoner, Judge
Cause No. 49G06-0611-FC-221639

October 18, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, Ronald Casner (Casner), appeals his conviction for operating a motor vehicle while privileges are forfeited for life, a Class C felony, Ind. Code § 9-30-10-17.

We affirm.

ISSUES

Casner raises two issues on appeal, which we restate as follows:

(1) Whether the trial court abused its discretion by admitting Casner's statements from his initial hearing; and

(2) Whether the trial court properly sentenced Casner.

FACTS AND PROCEDURAL HISTORY

On November 19, 2006, Officer Jeffery Scott (Officer Scott) of the Indianapolis Metropolitan Police Department noticed an accident involving two vehicles at the intersection of 38th Street and Shadeland Avenue. Officer Scott stopped at the scene and found a man later identified as Casner seated in the driver's seat of the first vehicle. As a part of his investigation, Officer Scott gathered identifying information from the involved parties. Upon discovering Casner's driver's license had been revoked for life due to his status as a habitual traffic violator, Officer Scott arrested Casner.

On November 20, 2006, the State filed an Information charging Casner with operating a motor vehicle while privileges are forfeited for life, a Class C felony, I.C. § 9-30-10-17. On November 21, 2006, at his initial hearing, the trial court asked Casner if given time

whether he would be able to hire counsel. Casner replied, "Sir, I have a good job outside and the vehicle I was driving was my boss's." (Transcript p. 12). On February 9, 2007, a bench trial was held. At trial the State moved to admit the initial hearing transcript, which was admitted over Casner's objection. After the close of evidence, the trial court found Casner guilty as charged. On February 28, 2007, the trial court sentenced Casner to the advisory sentence for a Class C felony, four years.

Casner now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. *Initial Hearing Transcript*

Casner first argues the trial court abused its discretion when it admitted the initial hearing transcript at trial. Specifically, Casner claims he was not represented by counsel at his initial hearing, but had he been represented by counsel he would not have made "that confused statement." (Appellant's Brief p. 9).

We review a trial court's decision to admit or exclude evidence for an abuse of discretion. *McVey v. State,* 863 N.E.2d 434, 440 (Ind. Ct. App. 2007), *reh'g denied.* An abuse of discretion occurs if a trial court's decision is clearly against the logic and effect of the facts and circumstances before the court. *Id.* However, if a trial court abuses its discretion by admitting the challenged evidence, we will only reverse for that error, if "the error is inconsistent with substantial justice" or if "a substantial right of the party is affected." *Id.* (quoting *Iqbal v. State,* 805 N.E.2d 401, 406 (Ind. Ct. App. 2004)).

An initial hearing is not a critical stage of the process requiring the presence of counsel. *Ridenour v. State*, 639 N.E.2d 88, 291 (Ind. Ct. App. 1994). "Instead, the trial court automatically enters a not guilty plea. Thus, [a defendants is not] called upon to use his [or her own] discretion or to make any type of decision that would require an attorney's advice." *Hayre v. State*, 495 N.E.2d 550, 552 (Ind. Ct. App. 1986). Moreover, in *Hayre*, we held:

> [i]t is unrealistic to say that when an accused is first arrested and informs a police officer of his desire to be represented by counsel that it would be a denial of constitutional rights to bring him before a magistrate for a preliminary hearing or before a court having felony jurisdiction, unless he is accompanied by an attorney. On the contrary, if he is indigent he must enter the [courtroom] in order to obtain counsel.

Id.

Casner relies on *McElroy v. State*, 553 N.E.2d 835 (Ind. 1990), for support. However, we find Casner's reliance on *McElroy* misplaced. In *McElroy*, as in this case, at no time did the trial court make any attempt to interrogate McElroy concerning the facts of the case. *See id.* at 839. Rather, upon learning McElroy was not represented by counsel, the trial court advised McElroy that counsel would be appointed for him, and notwithstanding McElroy's statements to plead guilty, entered a plea of not guilty.

Our review of the record in the case reveals that when Casner was brought in for his initial hearing, the trial court advised him of his right to counsel, right to have counsel appointed for him without charge, his privilege against self-incrimination, and then asked Casner whether he would be able to hire counsel if given time. In response Casner stated, "Sir, I have a good job outside and the vehicle I was driving was my boss's." (Tr. p. 12).

The trial court immediately advised Casner that he did not need to talk about the case. When making the decision to admit the initial hearing transcript at trial, the trial court noted that Casner was unresponsive to the question of which he was asked. We agree. Thus, we conclude the trial court did not abuse its discretion by admitting the transcript of the initial hearing at Casner's trial.

II. *Sentencing*

Additionally, Casner argues he was improperly sentenced. Specifically, Casner claims the trial court abused its discretion by failing to make a reasonably detailed sentencing statement and his sentence is inappropriate with respect to the nature of the offense and his character.

A. *Sentencing Statement*

Casner argues the trial court abused its discretion by failing to make a reasonably detailed sentencing statement and as such believes we should remand to the trial court to enter a reasonably detailed sentencing statement. As support, Casner cites to *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), where our supreme court held that "[o]ne way in which a trial court may abuse its discretion is failing to enter a sentencing statement." However, since *Anglemyer*, our supreme court in *Windhorst v. State*, 868 N.E.2d 504 (Ind. 2007), has specifically addressed whether a trial court must enter a sentencing statement when imposing an advisory sentence; and additionally, whether the trial court's failure to enter a sentencing statement demands remand.

Our supreme court in *Windhorst*, addressing whether trial courts post-*Anglemyer* are required to make sentencing statements and whether such statements must include aggravating and mitigating factors, stated:

> [C]onstruing what we believe is a legislative intent to retain the traditional significance of sentencing statements we conclude that under the new statutory regime, Indiana trial courts are required to enter sentencing statements *whenever imposing sentence for a felony offense*. In order to facilitate its underlying goals, the statement must include a reasonably detailed recitation of the trial court's reasons for imposing a particular sentence. If the recitation includes a finding of aggravating or mitigating circumstances, then the statement must identify all significant mitigating and aggravating circumstances and explain why each circumstance has been determined to be mitigating or aggravating.

Windhorst, 868 N.E.2d at 506 (quoting *Anglemyer*, 868 N.E.2d at 490 (emphasis added) (internal citation omitted)). However, in *Windhorst* our supreme court additionally held that because there are several options for an appellate court to review sentences imposed by trial courts – *i.e.*, remand to the trial court for clarification or new sentencing determination, or review the sentence under Indiana Appellate Rule 7(B) – remanding to the trial court is not the only remedy for appellants appealing their sentence. *Windhorst*, 868 N.E.2d at 507. Thus, as in *Windhorst*, because the trial court did not have the benefit of *Anglemyer*, and did not enter a sentencing statement, we will not remand to the trial court. Rather, we will review Casner's sentence under App. R. 7(B).

B. *Indiana Appellate Rule 7(B)*

Casner claims his sentence was inappropriate based on the nature of the offense and his character. However, he only offers argument with respect to his character. Thus, we will only review his sentence with respect to Casner's character. Specifically, Casner asserts he

struggled with an alcohol problem, but has been "clean and sober for quite a while." (Tr. p. 28). Casner describes himself as a "religious family man" and maintains he has the drive to overcome his shortcomings and the discipline to impose limits for himself to become successful and productive.

App. R. 7(B) provides that we "may review a sentence authorized by statute if, after due consideration of the trial court's decision, [we] find that the sentence is inappropriate in light of the nature of the offense or the character of the offender. In reviewing an App. R. 7(B) appropriateness challenge, we give the trial court's determination due consideration. *Rutherford v. State*, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). The burden is on the defendant to persuade us that his sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

Casner's extensive criminal history comprised of five felony convictions, including battery, resisting law enforcement, operating a vehicle while intoxicated, operating a vehicle while suspended as a habitual violator, and the instant offense, incurred over eight years is indicative of his recidivist nature. Additionally, Casner was on probation at the time of the instant offense. We do not find Casner's blatant disregard for the authority of Indiana's court and the safety of others is deserving of a sentence below the advisory. Thus, we are not persuaded that the advisory sentence of four years imposed by the trial court is inappropriate.

CONCLUSION

Based on the foregoing, we find the trial court (1) did not abuse its discretion by admitting Casner's statements from his initial hearing statements, and (2) properly sentenced Casner to the advisory four-year sentence for a Class C felony.

Affirmed.

SHARPNACK, J., and FRIEDLANDER, J., concur.